

The Flinn Report

Illinois

Regulation

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Joint Committee on Administrative Rules

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Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation is designed to inform and involve the public in changes taking place in agency administration.

New Regulations

TEMPORARY DRIVER'S LICENSE

The SECRETARY OF STATE adopted amendments for "Issuance of Licenses" (92 Ill Adm Code 1030), effective 1/1/05, to implement Public Act 93-752. The rulemaking establishes a "temporary visitor's driver's license" that may be issued to a foreign national and allows him or her to operate a motor vehicle under Illinois law. "Foreign national" is defined as a non-citizen of the U.S.A. who has been granted temporary, legal entry into this country by the U.S. Bureau of Citizenship and Immigration Services; is temporarily residing in Illinois; and is ineligible to obtain a federal social security number. Applicants for this type of temporary driver's license must present a valid passport and also an alien registration card, temporary resident card, or an arrival/departure card prior to taking a driver's license examination. Additional documentation is also specified.

Questions/requests for copies: Jo Ann Wilson, Office of the Secretary of State, 2701 S. Dirksen Pkwy., Springfield IL 62723, 217/785-1441.

Procedures" (71 Ill Adm Code 100), effective 1/1/05, to substantially revise the Board's hearing rules. The rulemaking specifies that contested cases may include prequalification suspensions, defines terms used throughout the Part, and revises filing procedures. The amendments also cover transcript availability and records retention. In addition, an administrative law judge (ALJ), rather than a hearing officer, will be appointed as soon as possible after CDB grants a petition for hearing. The powers and duties of the ALJ are listed, including regulating the course of the hearing. The rules of evidence and privilege, as applied in civil cases in Illinois circuit courts, will apply. Individuals and sole proprietors are allowed to represent themselves; other businesses are required to be represented by an attorney. Within 15 days after the ALJ is appointed, the Board must file a response to the hearing petition and, within 10 days after receiving the Board's response, the ALJ must notify all parties that a conference will be scheduled within another 10 days. The ALJ will render a written proposal for decision within 30 days (previously 15 days) after the hearing unless, based on the volume of evidence to be considered, more time is required. The ALJ will respond to petitions for reconsideration (rather

than the CDB executive director) by filing a final recommendation with the parties and the director. If no petition for reconsideration is filed, the executive director will issue a final and binding decision within 30 days after receiving the ALJ's proposal. Small businesses that request a hearing before the Board are affected by this rulemaking.

STATEWIDE ENERGY CODE

CDB also adopted a new Part titled "Capital Development Board Energy Code" (71 Ill Adm Code 600), effective 1/1/05. A companion emergency rulemaking became effective 7/26/04 and expired 12/22/04. The rulemaking establishes certain minimum requirements for the construction or repair of State facilities by incorporating by reference a modified version of American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. standards to promote energy-efficient design. The new Part provides definitions, creates an energy code advisory council to consider future modifications to this energy code, and explains compliance options and verification procedures. The Part also specifies procedures for requesting a variance from the code and appealing CDB's decision. Small businesses that are licensed design professionals or that are involved in the construction or repair of State facilities (e.g., State-funded housing; hospitals; penitentiaries; laboratories; educational, administrative, parking, and recre-

(cont'd next page)

CDB HEARING RULES

The CAPITAL DEVELOPMENT BOARD adopted amendments for "Hearing

NEW REGULATIONS: Rules adopted by agencies this week.

PROPOSED REGULATIONS: Rules proposed by agencies this week, commencing a 45-day First Notice period. Public comments must be accepted by the agency for the period of time indicated.

☞: Symbol designating rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.

QUESTIONS/COMMENTS/RULE TEXT: Direct mail or phone calls to the agency personnel listed below each summary. Providing volume and issue number of The Flinn Report or the Illinois Register will expedite the process. Some agencies charge copying fees. However, copy requests do not have to be made under the Freedom of Information Act.

New Regulations

ational facilities; and environmental equipment) may be affected by this rulemaking.

Questions/requests for copies of the 2 CDB rulemakings above: Jerry Crabtree, CDB, 300 Stratton Bldg., Springfield IL 62706, 217/557-7907, Fax 217/557-7913, E-mail: jcrabtre@cdb.state.il.us

☞ UNEMPLOYMENT INSURANCE

The DEPARTMENT OF EMPLOYMENT SECURITY adopted amendments “Determination of Unemployment Contributions” (56 Ill Adm Code 2770), effective 1/1/05. The Part 2770 amendments strike the obsolete list of average contribution rates by standard industrial classification for 1999 and add the new rates for each economic sector in the North American Industry Classification System for 2005. Small businesses, small municipalities, and not-for-profit corporations whose employees are covered by unemployment insurance may be affected by this rulemaking.

Questions/requests for copies: Gregory J. Ramel, DES, 33 S. State St., Rm. 937, Chicago IL 60603, 312/793-2333.

☞ HUMAN RIGHTS DEPT

The DEPARTMENT OF HUMAN RIGHTS adopted a new Part titled “Americans with Disabilities Act Grievance Procedure” (4 Ill Adm Code 1150), effective 12/28/04, to establish a methodology pursuant to the federal Americans with Disabilities Act of 1990 for resolving grievances asserted by individuals who feel they are discriminated against in programs, services, or activities offered by the Department. Definitions, procedures and time frames for submitting written complaint forms, possible agency actions, and an assurance of “case-by-case” resolution are covered in the rulemaking.

The Department also adopted amendments for “Procedures of the Department of Human Rights” (56 Ill Adm Code 2520), effective 12/28/04, to

disallow service or filing of surreplies to replies by means of telefax. In addition, the complainant’s signature on a complaint alleging discrimination in a real estate transaction no longer needs to be notarized, but a statement certifying to the accuracy of the complaint must be included. Also, the rulemaking requires orders of the Department’s chief legal counsel to be timely published on the DHR website. Small businesses, small municipalities, and not-for-profit corporations that are subject to the Illinois Human Rights Act may be affected by this rulemaking.

Questions/requests for copies of the 2 DHR rulemakings above: Brent A. Harzman, DHR, 100 W. Randolph, Ste. 10-100, Chicago IL 60601, 312/814-1906, TTY 312/263-1579.

MEDICAL ASSISTANCE

The DEPARTMENT OF PUBLIC AID adopted an amendment for “Medical Assistance Programs” (89 Ill Adm Code 120), effective 1/1/05. A companion emergency rulemaking became effective 9/1/04. The rulemaking broadens the medical assistance eligibility standard based on income for the KidCare Parent Coverage Waiver program (FamilyCare) from 90% of the federal poverty level (FPL) to 133% for certain caretaker relatives who are 19 years of age or older.

☞ LONG-TERM CARE

DPA adopted amendments for “Specialized Health Care Delivery Systems” (89 Ill Adm Code 146) and “Medical Payment” (89 Ill Adm Code 140), both effective 1/1/05. Companion emergency rulemakings for each became effective 8/11/04. The Part 140 rulemaking implements Public Act 93-841 by reinstating the policy of making bed reserve payments to Medicaid-funded nursing facilities when patients are hospitalized. To be eligible for the payments, a facility must have a 93% or higher occupancy level with at least 90% of those patients eligible for Medicaid. Bed reserve payments are limited to 10 days per hospital

stay. The Part 148 rulemaking reinstates temporary absence payments for patients in supportive living facilities (SLFs). DPA will pay for up to 30 days per State fiscal year during a Medicaid resident’s temporary absence from the SLF due to hospitalizations, vacations, or other approved reasons. Those affected by these rulemakings include Medicaid-funded nursing facilities and supportive living facilities.

☞ HOSPITALS

DPA also adopted an amendment for “Hospital Services” (89 Ill Adm Code 148), effective 1/1/05, to add a new qualifying criterion for safety net adjustment payments for hospital services to Medicaid patients based upon a Medicaid inpatient utilization review (MIUR) greater than 25%, an overall hospital occupancy rate greater than 68% in the base year, and provision of more than 12,000 total Medicaid inpatient days of care in the base year. For a hospital qualifying under this new standard, the safety net adjustment rate is set at \$117 per Medicaid inpatient day. At this time, the only hospital specifically affected by this rulemaking is Holy Cross Hospital in Chicago.

Questions/requests for copies of the 4 DPA rulemakings above: Joanne Scattoloni, DPA, 201 S. Grand Ave. E., 3rd Fl., Springfield, IL 62763-0002, 217/524-0081.

☞ NURSING HOMES

The DEPARTMENT OF PUBLIC HEALTH adopted amendments for “Skilled Nursing and Intermediate Care Facilities Code” (77 Ill Adm Code 300), effective 12/22/04, to exempt facilities with 20 or fewer residents with serious mental illness from certain specified requirements for consulting with a psychiatrist (psychiatric medical director), employing a psychiatric rehabilitation services director, using a psychiatric rehabilitation services coordinator for case management, and employing psychiatric rehabilitation services aides (PRSAs).

New Regulations

The exemption requires that the facility not admit residents under age 65 with serious mental illness and meet specified recordkeeping criteria. However, DPH may allow admission of someone under age 65 on a case-by-case basis with prior departmental approval. Additional amendments allow occupational therapists to serve as psychiatric rehabilitation services directors or coordinators and to perform psychosocial assessments. Also, persons who have successfully completed a psychiatric rehabilitation certificate program, in addition to PRSAs, may provide psychiatric rehabilitation program services to facility residents. A change since 1st Notice states that a facility may use consultants with advanced professional degrees who meet the same requirements as facility personnel to provide psychiatric rehabilitation services. Those affected by this rulemaking include skilled nursing and intermediate care facilities.

Questions/requests for copies: Susan Meister, DPH, 535 W. Jefferson St., 5th Fl., Springfield IL 62761, 217/782-2043, E-mail: rules@idph.state.il.us

ADULT LITERACY

The SECRETARY OF STATE adopted amendments for "Literacy Grant Program" (23 Ill Adm Code 3040), effective 1/1/05 to strike the requirement that 10% of grant funds be withheld

until the State Library receives and approves the final program and financial reports of the funded project. The full grant amount will be made in a single payment. The rulemaking also changes the site visits made by a literacy grant monitor from a minimum of once during a fiscal year to once every 2 years. A change since 1st Notice states that audits may be requested for such reasons as poor recordkeeping, fiscal irregularities, or staff's request after viewing narrative reports or after viewing files at the program site. Those affected by this rulemaking include community-based organizations, libraries, offices of education, and community colleges.

Questions/requests for copies: Joseph Natale, Illinois State Library, Gwendolyn Brooks Bldg., Springfield IL 62701-1796, 217/558-4185, E-mail: jnatale@ilsos.net

STATE PROCUREMENT

The PROCUREMENT POLICY BOARD adopted amendments for "General Policies" (2 Ill Adm Code 3002), effective 1/1/05, by required rulemaking in accordance with Section 5-15 of the Illinois Administrative Procedure Act. The amendments implement Public Act 93-632, which repeals provisions of the Illinois Procurement Code that required the Board to review and approve construction-related procurements for portions of State buildings

within the Capitol Complex that are used or occupied by the legislative branch. The rulemaking also implements Public Act 93-839, which allows the Board to review certain proposed State-issued contracts. (Statute exempts small procurement and emergency procurement contracts and certain small, nonrenewable professional and artistic services contracts.) No contract subject to this review may be entered into until the prescribed 30-day Board review period, which begins when the date the notice of contract award or letting is published in the *Illinois Procurement Bulletin*, has expired. (However, statute provides that the Board may waive this 30-day period.) The amendments establish procedures for the Board to follow during its review. The rulemaking further requires the Board to apprise the affected State agency of its findings concerning the contract review prior to publishing its final determination in the *Bulletin* and give the agency an opportunity to respond. In addition, the Board's address is corrected, and "policy" is defined. Small businesses seeking to be awarded certain State contracts may be affected by this rulemaking.

Questions/requests for copies: Matt Brown, PPB, 511 W. Capital, Ste. 102, Springfield IL 62704, 217/785-3988, Fax 217/557-9927.

Second Notices

The following rulemakings were moved to second notice this week by the agencies listed below, commencing the JCAR review period. The rulemakings will be considered at JCAR's 1/11/05 meeting in Springfield.

DEPARTMENT OF REVENUE

"Service Occupation Tax" (86 Ill Adm Code 140) proposed 3/12/04 (28 Ill Reg 4528)

ILLINOIS COMMUNITY COLLEGE BOARD

"Administration of the Illinois Public Community College Act" (23 Ill Adm Code 1501) proposed 9/10/04 (28 Ill Reg 12501)

STATE UNIVERSITIES RETIREMENT SYSTEM

"Universities Retirement" (80 Ill Adm Code 1600) proposed 3/5/04 (28 Ill Reg 4161)

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NEW JCAR E-MAIL & WEBSITE ADDRESS

On December 1, 2004, the Illinois General Assembly's domain name for e-mail purposes changed from legis.state.il.us to ilga.gov. Therefore, all JCAR e-mail should now be sent to jcar@ilga.gov. Also, our website on the internet changed to www.ilga.gov/ commission/jcar on December 18, 2004.